

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 330 OF 2015**

Shri Vasant Tukaram Parab
son of Shri Tukaram Parab,
aged about 66 years, Indian National,
resident of House No.199,
Malbhat, Margao-Goa.

... Petitioner

Versus

Mrs. Anurolina Gomes,
of major age, Indian National,
resident of House No.199,
Malbhat, Margao-Goa.

... Respondent

Mr. D. Pangam, Advocate for the Petitioner.
Mr. Sudin M.S. Usgaonkar, Senior Advocate with Mr. K. Padgaonkar,
Advocate for the Respondent.

Coram:- F. M. REIS, J.

Date:- 16th June, 2015

ORAL JUDGMENT :

Heard Mr. D. Pangam, learned Counsel appearing for the petitioner and Mr. Sudin M.S. Usgaonkar, learned Senior Counsel appearing for the respondent.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the respondent waives service.

3. The above petition, inter alia, takes exception to the orders dated 10/10/2014 and judgment dated 29/11/2014, whereby the appeal preferred by the petitioner came to be dismissed as being barred by limitation.

4. Briefly, the undisputed facts of the case are that the judgment impugned in the appeal was passed by the learned Rent Controller in case no.BLDG/ARC-I/4/99 filed by the respondent which came to be disposed of on 27/11/2012. A certified copy thereof was applied by the petitioner on the same day and the copy thereof was delivered on 10/12/2012. The appeal challenging the said judgment came to be filed before the learned Tribunal on 9/01/2013. It is not disputed that the time prescribed for filing an appeal before the Tribunal is 30 days from the date of such judgment. After deducting the period for obtaining the certified copy, the appeal preferred by the petitioner was within the period of limitation. This factual position has otherwise not been disputed by the respondent herein. Though such clear facts can be verified from the records by an impugned judgment dated 10/10/2014, the learned Judge came to the conclusion that the appeal was barred by limitation. I fail to understand as to how the learned Judge could have taken such view when the appeal was within time

and the factual aspects have not been disputed by the respondent. As such, the question of examining any application for condonation of delay would not arise at all. What is even more unfortunate is that the learned Counsel appearing for the petitioner before the learned District Judge did not even point out this aspect to the learned Judge when Shri Usgaonkar, learned Senior Counsel did not dispute the said factual aspects.

5. Be that as it may, considering that the appeal preferred by the petitioner was within the period of limitation, the learned Judge was not justified to pass the impugned order dated 10/10/2014 and, as such, the judgment dated 29/11/2014, consequently cannot be sustained and deserve to be quashed and set aside.

6. In view of the above, we pass the following order:

O R D E R

(i) The impugned order dated 10/10/2014 and the judgment dated 29/11/2014 are quashed and set aside.

(ii) Rent Appeal No.50/2013/II is restored to the file of the learned Additional District judge.

(iii) The learned Additional District Judge is directed to dispose of the above appeal on its own

merits in accordance with law as expeditiously as possible.

(iv) All contentions of both the parties are left open.

(v) Rule is made absolute in the above terms.

(vi) Parties are directed to appear before the learned Judge on 20/07/2015 at 10.00 a.m.

F. M. REIS, J.

NH/-